HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.24134 of 1998

Dated: 31.10.2007

Between:
The Depot Manager, APSRTC Bus Depot,
Narayankhed, Medhak District.

...
Petitioner

AND

1. Syed Yousuf Ali.
2. The Presiding Officer, Labour Court-II,
   Hyderabad.

... Respondents.

Counsel for the petitioner: Sri V.Padmanabha Rao.

Counsel for Respondent No.1: Sri A.K.Jayaprakash Rao
Counsel for Respondent No.2: Government Pleader for Labour.

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HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

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WRIT PETITION No.24134 of 1998

ORDER:

This Writ Petition is filed for a Writ of Certiorari and to quash Award dated 22-11-1996 passed by the Presiding Officer, Labour Court-II, Hyderabad (for short "the Labour Court") in I.D.No.38 of 1993, whereby he set aside the order removing the 1st respondent from service and directing his reinstatement into service with all attendant benefits like continuity of service, but without back wages.

The facts of the case, in brief, are that respondent No.1 was appointed as a Conductor in the Andhra Pradesh State Road Transport Corporation (for short "the Corporation") in the year 1989. On 21-2-1991 when a check was held in respect of bus bearing registration No.AAZ 8680 on the route Narayankhed to Thorna, respondent No.1, who was on duty, was found having committed the irregularity of not collecting fares from 30 out of 32 passengers and not issuing tickets to them. Following the same, a charge memo dated 5-3-1991 was issued and it is apt to extract the charges hereunder:

1. For having violated the rule 'Issue and Start' which constitutes misconduct under Reg.28 (xxxii) of APSRTC Employees

(Conduct) Reg.1963.

2. For having failed to issue tickets to 20 passengers (i.e., thirteen individuals and seven passengers in a batch) who boarded the bus at Jojana and found alighting without ticket at Santhpur, ex-stage 9 to 9/10 even after collecting the requisite fare of Re.1/- from each passenger at Jojana itself (i.e., at their boarding place) which constitutes misconduct under Reg. 28(vi)(a) of APSRTC Employees (conduct) Reg. 1963.

3. For having failed to issue tickets to 10(ten) passengers who boarded the bus at Jamgi and found alighting without tickets at Santhpur, ex-stage 7 to 9/10 even after collecting the requisite fare of Rs.3/- each at their boarding place itself which constitutes misconduct in terms of Regulation 28 (vi) (a) of APSRTC Employees (Conduct) Reg. 1963.

4. For having closed the tray numbers of all denominations up to stage No.9 without completing the above issues, which constitutes misconduct under Reg. 28(xxxii) of APSRTC Employees (Conduct) Reg. 1963".

Respondent No.1 has not submitted his explanation and he failed to respond to the enquiry notices dated 30-4-1991, 5-7-1991 and 12-7-1991, which were returned with an endorsement that the addressee was out of station, though respondent No.1 finally acknowledged notice dated 29-7-1991 and participated in the enquiry. After completion of the enquiry, the Enquiry Officer submitted his report and after considering the said report, the petitioner issued a show cause notice to respondent No.1 and enclosed a copy of the enquiry report.

Though respondent No.1 acknowledged the show cause notice, he failed to submit his explanation. The petitioner, therefore, passed order dated 18-8-1992 removing the 1st respondent from service. Questioning this order, respondent No.1 approached the Labour Court under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short "the Act") and as already noted hereinabove, the Labour Court passed Award on 22-11-1996, the terms of which were already indicated supra. Questioning the said Award, the Depot Manager, APSRTC, Narayankhed Depot filed the present Writ Petition.

Heard Sri S.Ravi Raj, counsel representing the Standing Counsel for the Corporation and Sri A.K.Jaya Prakash Rao, learned counsel representing respondent No.1.

A perusal of the Award of the Labour Court shows that it was in complete agreement with the findings of the Enquiry officer that respondent No.1 is guilty of all the charges framed against him. It is apposite to extract here the relevant portion of the Award:

> "The petitioner is mainly charged for having failed to issue tickets to 20 passengers found alighting without tickets at Santhpur, ex-stages to 9/10 even after collecting the requisite fare of Re.1/- from each passenger at Jojana the boarding point itself and also having failed to issue tickets to 10 passengers who boarded the bus at Jangi and found alighting without tickets at Santhpur ex-stages 7 to 9/10 even after collecting the requisite fare of Rs.3/- each at their boarding point itself and for having closed the tray numbers of all denominations up to stage No.9 without completing the above issues and also violating the rule 'Issue and Start'. It is found from the said 30 passengers who were alighting without tickets from whom the petitioner had collected the fare and did not issue them tickets, 20 of them were alighting in the minimum of fare and the other 10 were crossed a distance of 21/2 fare stage. The facts further reveal that there were 32

passengers including 30 ticketless passengers. The plea of the petitioner to the said charges is that the checking officials forced him to give his spot explanation according to their dictation and obtained his signature forcibly. He pleaded further that the passengers in charge No.2 and 3 have boarded the bus at stage No.9 and he has not committed any act of misconduct. It is also contended by him reiterating that he has not collected any fare amount from the passengers in question nor there was any malafide intention on his part either to appropriate or misappropriate the legitimate revenue of the respondent-Corporation. The said pleas of the petitioner were not accepted by the Enquiry Officer as well as by the respondent rather rightly too, as can be seen from a careful scrutiny of the proceedings and the material made available on record. Thus the findings of the Enquiry Officer become unassailable".

Having thus completely agreed with the finding of guilt arrived at by the domestic tribunal, the Labour Court, however, modified the punishment by invoking the doctrine of proportionality. I have carefully considered the Award and I am of the view that the Labour Court was totally unjustified in modifying the Award purporting to apply the doctrine of proportionality. The gravamen of the misconduct proved against respondent No.1 is that he collected the fares, but failed to issue tickets to 30 out of 32 passengers, who travelled in the bus. In my considered opinion, the misconduct proved against respondent No.1 is so grave that it does not warrant application of doctrine of proportionality. This doctrine is applied only in cases where the punishment imposed does not suit the gravity of misconduct, in the sense that the punishment imposed is so disproportionate to the gravity of misconduct and it shocks the judicial conscience. See RANJIT THAKUR V UNION OF INDIA(1) , OM KUMAR V. UNION OF INDIA(2) , UNION OF INDIA V. GANAYUTHAM(3), B.C.CHATURVEDI V.

UNION OF INDIA(4) and APSRTC V. RAGHUDA SIVA SANKAR PRASAD(5) to cite a few.

Even taking the most liberal view of the matter, removal of a conductor - who collected fares from almost all the passengers found in the bus, except two, and failed to issue tickets – cannot be said to be a punishment which is disproportionate to the gravity of misconduct.

Learned counsel for respondent No.1, however, submitted that denial of back wages to his client is sufficient punishment to meet the ends of justice. But, I am not inclined to accept this contention. In my view, a person who is found guilty of a serious misconduct of collecting fares from almost the entire passengers travelling in the bus and not issuing tickets to them does not deserve to continue in a Corporation, which is involved in rendering service to the general public. Such people have no place in a service organization like APSRTC.

In this view of the matter, the Writ Petition is allowed and the impugned Award dated 22-11-1996 in I.D.No.38 of 1993 passed by the Labour Court is set aside.

Dt.31-10-2007 C.V.NAGARJUNA REDDY, J

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(1) (1987) 4 SCC 611
(2) (2001) 2 SCC 386
(3) (1997) 7 SCC 463
(4) (1995) 6 SCC 749
(5) (2007) 1 SCC 222